IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 600 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE AKSHAY H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAGODRA GROUP SEVA SAHKARI MANDALI

Versus

HARIBHAI D MAKWANA

Appearance:

1. Special Civil Application No. 600 of 2001

MR ANAND SHARMA for MR SUNIL C PATEL for Petitioner

MR KAMLESH B MEHTA for Respondent No. 1

CORAM : MR.JUSTICE AKSHAY H.MEHTA

Date of decision: 29/07/2002

ORAL JUDGEMENT

1. The petitioner has approached this Court under Article 226 and 227 of the Constitution of India to challenge order passed by the Labour Court in Misc.

Application No. 241/98 in Reference [LCA] No. 1526/1992 dated 18/3/2000.

2. The short facts, which are relevant for the purpose of this petition, can be stated as under :-

2.1. Respondent was working with the petitioner as Secretary of the petitioner. His service was terminated by the petitioner on the ground of alleged misconduct having been committed by him in the year 1992. Respondent, being aggrieved by the order of dismissal raised dispute which ultimately came to be referred to the Labour Court under the provisions of section 10 (1)(c) of the Industrial Disputes Act (for short 'the Act'). The reference was numbered as Reference [LCA] No. 1526/1992. The said reference ultimately came to be disposed of in terms of the settlement arrived at between the parties. The settlement is dated 20th July, 1998 and the reference came to be disposed of also on the same date.

2.2. Subsequently the respondent served the petitioner with a notice that he should be reappointed on his original post as per the terms of the settlement arrived at before the Labour Court. It is the say of the petitioner that it came to know about the disposal of the reference only when it received the notice from the respondent. The petitioner's case further is that on inquiry it was found that the respondent had played fraud upon the Court by presenting a fake settlement wherein the signature of the then Chairman of the petitioner, namely Kanubhai Makwana was obtained fraudulently. It may be noted here that said Kanubhai Makwana is no more with the petitioner and the present petition has been filed by his successor in office Mr. Laljibhai. The petitioner, therefore, approached the Labour Court by filing application under Section 26 (a) of the Act for restoration of the reference and to decide the same on its merits. Before the Labour Court it was contended by the petitioner that the respondent had concocted the settlement and had forged the signature of the former Chairman of the petitioner and on the basis of such fictitious settlement the respondent had obtained order in his favour from the Labour Court. The petitioner, therefore, submitted that the said award dated 20/7/1998 was required to be quashed and set aside and instead reference was required to be restored and decided on its merits.

2.3. The Labour Court came to the conclusion after hearing the parties and verifying the record that there

was no substance in the contention raised by the petitioner with regard to forged settlement. The Labour Court has based its finding on the fact that the former Chairman himself had signed the settlement and there was no doubt about it. The Misc. Application has been signed by Mr. Makwana and the Labour Court has found to be genuine. It may also be noted here that with regard to the forgery of the settlement the petitioner has given different versions. In the petition before this Court it has been stated in para. 2.2 that the respondent had forged signature of the former Chairman and in the next breath it has been stated in the same para. by the petitioner that the said signature had been obtained by playing fraud on the former Chairman. It is difficult to understand what is the exact case of the petitioner. Forgery of a signature would certainly indicate that some one else has made the signature with a view to show that it is that of the former Chairman and when it is stated that it has been obtained by fraud, it would mean that by practicing some deception on former Chairman his signature has been obtained. These two things therefore cannot go together. Moreover, it is the say of the petitioner that the signature was obtained by fraud on a blank letter-head of the former Chairman. However, the Labour Court has found that the settlement is not on the letter-head but it is on a plain paper.

3. I have perused the original settlement which is at Exh. 9 on the record of the Labour Court, since R & P of the said reference has been kept available with this Court. It is a hand written document and which has been signed by Kanubhai Makwana, the former Chairman of the petitioner as well as Haribhai D. Makwana i.e. the respondent. Below it the Presiding Officer of the Labour Court has recorded his order and has also appended his signature. The say of the petitioner that the signature of the former Chairman of the petitioner was obtained on the letter-head by the respondent by fraud and the said paper bearing signature of the former Chairman has been utilized for submitting a settlement before the Labour Court does not appear to be correct. If the petitioner's say was right, the settlement would have been on the letter-head of the former Chairman, but it is not so. In view thereof, the story of the petitioner cannot be accepted.

4. Moreover, the order of the Labour Court under challenge before this Court clearly shows that the former Chairman Mr. Kanubhai Makwana was very much present before the Labour Court when the settlement at Exh. 9 came to be submitted. The Labour Court has also

observed that the settlement has been signed by said Kanubhai and there is also stamp of the petitioner. There is no reason for me to disbelieve what has been recorded by the Labour Court in para. 4 of its order. Mr. Anand Sharma, learned counsel appearing for Mr. S.C. Patel for the petitioner has submitted that said Kanubhai has filed affidavit to show that he had never remained present and that he had signed only blank letter-head. However, the said affidavit seems to be an after thought. When the Labour Court has categorically observed in para. 4 of the impugned order that the former Chairman was present in the Court, I have to accept it and I have to discard the version of the petitioner. There is another reason also for not accepting the affidavit of Kanubhai because he does not seem to be consistent in his story. As already stated above, his say that the signature was obtained on a blank letter-head is found to be incorrect. In that view of the matter, I am not inclined to accept the contention of Mr. Sharma.

4.1. Further in the copy of the impugned order which has been annexed by the petitioner at Annexure-A at page 9 of the petition shows as under :-

"Signature illegible
Superintendent, Labour Court, Ahmedabad"

5. Now if the original record is perused, the order below the settlement has been signed by none else than the Presiding Officer of the Labour Court Mr. Saiyed. The copy that has been produced by the petitioner is not only incorrect and inaccurate but also misleading. For these reasons, this petition does not have any merit and it deserves to be dismissed.

Considering the attitude of the petitioner, it is just, proper and in the interest of justice that it should be saddled with the costs. The petitioner is, therefore, directed to pay to the respondent a sum of Rs.3,500/- by way of cost. Petition stands dismissed. Rule discharged.

[AKSHAY H. MEHTA, J.]

* Pansala.